

*In Re:* Fat City Holding Company )  
 Personal Property Account No. 090607 ) Davidson County  
 Tax year 2007 )



The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In the instant case, of course, there is no question that the taxpayer was properly notified of the disputed assessment. Hence the State Board would conceivably have jurisdiction in this matter only under a law whereby:

The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

Tenn. Code Ann. section 67-5-1412(e), as amended by Chapter No. 133 of the Public Acts of 2007.

Historically, the Assessment Appeals Commission (appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502) has construed this *reasonable cause* statute to require "a showing of circumstances beyond the taxpayer's reasonable control that prevent the taxpayer from appealing to the county board." Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), p. 2.

The appellant certainly deserves sympathy insofar as his reliance on a subordinate to report the personal property in question turned out to be misplaced. But as the recipient of numerous forced assessments in the past, Mr. Michael must have known – or at least *should* have known – when notice of the assessment for the current tax year (2007) would likely be sent. Yet, although he had hired this employee fairly recently, Mr. Michael apparently did not check to ensure that the assigned task had been satisfactorily completed until some four months *after* the March 1, 2007 deadline for filing the schedule. Thus Mr. Michael must accept much of the blame for allowing the opportunity to appeal this latest forced assessment to the county board to expire. The aforementioned letter, to his credit, evidences acknowledgment of this fact.

That other taxpayers have experienced similar misfortune may be of little consolation to the appellant. Nevertheless, by way of example, ABG Caulking Contractors, Inc. (Davidson County, Tax Year 2004, Final Decision and Order, May 11, 2006), is instructive. In that case, a Goodlettsville contractor sought the State Board's acceptance of a direct appeal from a forced assessment that resulted from the failure of his hard-pressed accountant to file a timely personal property schedule. In upholding the administrative judge's recommended dismissal of the appeal, the Assessment Appeals Commission observed that:

Mr. Greene has been forthright in describing his plight, and the tax consequences of his error are severe: the forced assessment for 2004 yields a tax bill of \$22,731 versus a likely bill of about \$9,000 had the schedule been properly filed. Unfortunately these circumstances were plainly not beyond the taxpayer's control. **Moreover, the account was force assessed for the three previous years, and we must conclude the primary cause of the excessive assessment is neglect by the taxpayer's agent or employee, which we do not find to be beyond the taxpayer's control.**



*Id.* at p. 2. [Emphasis added.]

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5<sup>th</sup> day of November, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Noel Michael, Fat City Holding Company  
Jo Ann North, Davidson County Assessor of Property